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DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Civil Action No. 1165

FRED A. HUGHES, ET AL.,

vs.

CADDO PARISH SCHOOL BOARD, ET AL.

MOTION TO HAVE AMENDED JURISDICTIONAL STATEMENTS FILED, ALLOWED AND MADE PART OF RECORD.

Come now Fred A. Hughes, H. Clay Garrison, J. Steve Varley, Mrs. Tom S. Pittman and Weyman H. Oden, appellants in the above entitled and numbered suit, and move and pray the court that the accompanying jurisdictional statements be filed, allowed and made part of the record herein.

WHEREFORE, they pray that this motion be sustained and for such orders as may be just and proper in the premises.

O. W. & B. D. BULLOCK,
By OTIS W. BULLOCK,
Attorneys for Appellants.

Order

Considering the above motion and the law, let the accompanying jurisdictional statements be filed, allowed and made part of the record in this case.

November 8, 1944.

ELMO P. LEE,
United States Circuit Judge;
BEN C. DAWKINS,
United States District Judge;
G. L. PORTERIE,
United States District Judge.

Filed Nov. 14, 1944. Philip H. Mecom, Clerk U. S. District Court, Western Dist. of Louisiana.

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Civil Action No. 1165

FRED A. HUGHES ET AL.,

vs.

CADDO PARISH SCHOOL BOARD ET AL.

Amended Jurisdictional Statements

Appellants seek to have enjoined because of unconstitutionality the enforcement of Act No. 342 of the Legislature of Louisiana for the year 1944 and the resolution of the Caddo Parish School Board adopted under and pursuant thereto September 6, 1944. The three-judge District Court held that no federal question was involved, sustaining defendants' motion to dismiss for lack of jurisdiction over the subject matter, and denying appellants an interlocutory injunction, which matters constitute abuse of its discretion.

The date of the judgment or decree to be reviewed is November 3, 1944. Appellants' motion for appeal bears date of November 4, 1944, but the order allowing the appeal has not yet been filed in the office of the Clerk of the trial court.

It is contended that the Supreme Court has jurisdiction on appeal to review the judgment or decree in question for the following reasons:

1. Act No. 342 of the legislature of Louisiana for the year 1944 and the resolution of the Caddo Parish

School Board adopted under and pursuant thereto September 6, 1944, prohibiting Greek-letter fraternities and sororities in the high schools of Caddo Parish, Louisiana and providing for the expulsion or suspension of pupils affiliated with said organizations, infringe the due process and equal protection clauses of the fourteenth amendment to the constitution of the United States;

2. The Legislature of Louisiana having refused to find that Greek-letter fraternities and sororities are inimical to the public good and to the general welfare of the public high schools of Louisiana, by striking from the statute as originally introduced an express declaration to that effect, said enactment is without a basis upon which to rest, and constitutes a violation of the inherent personal rights guaranteed to every citizen by the fourteenth amendment to the federal constitution.

It is believed that jurisdiction of the Supreme Court is sustained by Section 266 of the Judicial Code, as amended, 28 U. S. C. A. Sec. 380, and the following decisions:

Robert T. Meyer v. *State of Nebraska*, 67 L. Ed. 1042;
West Virginia State Board of Education v. *Walter Barnette et al.*, 87 L. Ed. 1628.

Appellants append to this statement a copy of the opinion of the three-judge District Court upon rendering the judgment or decree sought to be reviewed.

They pray that the above jurisdictional statements be filed, allowed and made part of the record in this case.

November 7, 1944.

O. W. & B. D. Bullock,
By Otis W. Bullock,
Attorneys for Appellants.

Filed November 14, 1944. Philip H. Mecom, Clerk U. S. District Court, Western Dist. of Louisiana.

APPENDIX "A"

Act No. 342

House Bill No. 454

By Messrs. Stovall, J. K. Smith, Hair, Close, Boyd, Bell, Claunch, Delouche

An Act

To prohibit fraternities, sororities and secret societies, as defined in this Act, in the public high schools of the State of Louisiana; to provide for the enforcement of this Act and to fix penalties for the violation hereof by any student of the Public high schools; to make it a misdemeanor for any person not enrolled in any public high school to solicit or encourage any pupil enrolled in any such public high school to join or to become a pledge to any high school fraternity, sorority or secret society, and to fix the penalty therefor; and to repeal all laws, or parts of laws, in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That a public high school fraternity, sorority or secret society, as contemplated by this Act, is hereby defined to be any organization composed, wholly or in part, of public high school pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such high school or schools on the basis of the decision of the membership of such fraternity, sorority or secret society rather than upon the free choice of any pupil in the school.

Section 2. That after any parish school board, by a majority vote, shall prohibit fraternities, or sororities in the high schools of such parish, it shall be the duty of the principals of such parish high schools, of such parish to suspend or expel from said public high school or schools

who control any pupil or such public school or schools who shall be or remain a member of, or shall join or promise to join, or who shall become pledged to become a member, or who shall solicit or encourage any other person to join, promise to join, or be pledged to become a member of, any such public high school fraternity or sorority or secret society, as defined herein; provided that after any principal or school board shall have taken any action authorized by this Act, such action shall be subject to the supervision and control of the State Board of Education.

Section 3. That it shall be unlawful from and after the passage of this Act for any person not enrolled in any public high school in any parish in which its school board has prohibited fraternities or sororities to solicit or encourage any pupil enrolled in any such public high school to join or to pledge himself or herself to become a member of any such public high school fraternity or sorority or secret society. Any person violating this section of this Act shall be guilty of a misdemeanor and shall be fined not less than Twenty-five Dollars, nor more than Two Hundred Fifty Dollars for each and every offense.

Section 4. That if any section, subsection, clause, sentence, or phrase of this Act is for any reason held unconstitutional and invalid, such decision shall not effect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed this Act in each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of its sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. That all laws or parts of laws, in conflict hereby be and the same are hereby expressly repealed.

NOTE:—The foregoing Act having been submitted to his Excellency, Honorable J. H. Davis, Governor of the State of Louisiana, for his approval or disapproval, and the same not having been acted upon within the time limit pre-

scribed by the Constitution of this State, the same has become a law by limitation.

(Signed) WADE O. MARTIN, JR.,
Secretary of State.

November 7, 1944.

July 17, 1944. A true copy: Wade O. Martin, Jr., Secretary of State.

O. W. & B. D. BULLOCK,
By OTIS W. BULLOCK,
Attorneys for Plaintiffs.

NOTE: Resolution of the Caddo Parish School Board adopted September 6, 1944—which is attached at this place to the Amended Jurisdictional Statements—is omitted for the reason that it is copied in full on *PAGE 8* of this transcript.

APPENDIX "B"

DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 1165

FRED A. HUGHES et al.,

vs.

CADDO PARISH SCHOOL BOARD et al.

Extracts from Section 266 of the Judicial Code

Judicial Code, section 266, amended. Same; alleged unconstitutionality of State statutes; appeal to Supreme Court.

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution

of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges; Provided, however, That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. * * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

O. W. & B. D. BULLOCK,
By OTIS W. BULLOCK,
Attorneys for Plaintiffs.

November 7, 1944.

Filed November 14, 1944. Philip H. Mecom, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

APPENDIX "C"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 1165

FRED A. HUGHES, et al., *Plaintiff*,

v.

CADDO PARISH SCHOOL BOARD, et al., *Defendant*

Otis W. Bullock, Commercial Building, Shreveport, Louisiana, attorney for complainants.

Edwin L. Blewer, State District Attorney, Shreveport, Louisiana; R. H. Lee, Special Assistant Attorney General, attorneys for defendants.

Before Lee, Circuit Judge, and Dawkins and Porterie, District Judges

PORTERIE, District Judge:

We will consider first the motion filed by the defendants to dismiss the petition of complainant for the lack of jurisdiction. The issue to be decided is whether or not we have been presented with a federal question.

The complaint is by the four parents of children attending the Byrd High School of Shreveport, Louisiana, who are members of national Greek-letter fraternities, chapters of which have been in public existence at this school for a number of years. Act No. 342 of the Legislature of Louisiana for 1944, granting to the various school fraternities and sororities, is attacked as being unconstitutional, null, and void for the following reason:

> "(1) Said Statute is violative of the 14th Amendment to the Constitution of the United States in that it deprives plaintiffs and their children of vested rights without due process of law, abridges their privileges and immunities, deprives them of the equal protection

of the laws, and attempts to grant special privileges to a class, limiting the privilege of free education to students who are not members of Greek-letter fraternities and sororities."

There are five other reasons of unconstitutionality alleged under the constitution of the state of Louisiana; and, finally, a seventh reason, wherein both constitutions, federal and state, are involved:

"(7) Said Statute, as originally introduced in the House of Representatives, expressly declared that high school fraternities were inimical to the public good and to the welfare of the public high schools of Louisiana, but this language was stricken from said Act by the House of Representatives: that the Legislature, having failed to find said organizations detrimental to the general welfare, and, on the contrary, having in effect found otherwise, said Statute has no legal basis on which to rest, and constitutes a violation of the inherent personal rights guaranteed to every citizen by the State and Federal Constitutions."

The complaint further alleges that:

"Under date of September 6, 1944, at its regular session, the Caddo Parish School Board, proceeding under said Act No. 342 of 1944 of the Legislature, adopted a resolution abolishing high school fraternities and sororities, and making it the duty of the principals of the various high schools in the Parish of Caddo to suspend or expel from said schools any pupil who might be or remain a member of any high school fraternity or sorority, a copy of said resolution being annexed hereto and made a part hereof for the purpose of showing rem ipsam."

Then the complaint further states, in Article 14, that:

"The resolution of the Caddo Parish School Board adopted on September 6th, 1944, is unconstitutional, null and void because said School Board received no authority whatsoever to adopt said resolution by virtue

of Act No. 342 of 1944, said Act being likewise unconstitutional and null; that said resolution is also illegal, unconstitutional, null and void for the following reason, to-wit:

"(1) Said resolution is violative of the 14th Amendment to the Constitution of the United States for the same reasons given above in connection with the illegality of Act 342 of 1944."

Also, this Article XIV lists six nullities under the state constitution.

The rest of the complaint has the usual necessary allegations as to the necessity for a temporary restraining order, to be followed later by a hearing as to whether or not a temporary injunction would issue, and to finally culminate in a permanent injunction.

The pupils involved in this case are above the age limit of the state law which makes school attendance compulsory. Act 117 of 1922.

We dispose of all the questions raised as to the want of state constitutionality by saying that in a state suit all these attacks based on violations of the state constitution were refuted by an oral judgment in the state district court; a rule nisi for a temporary injunction was denied, and at the same time the temporary restraining order previously issued was recalled. Writs were applied for to the supreme court on the relation of the original complainants, and the constitutionality of Act 342 of 1944 and of the resolutions adopted by the Caddo Parish School Board on November 11, 1943, and on September 6, 1944, was put at issue.

The plaintiff's petition, the defendant's original and amended answers, the resolution of the Caddo Parish School Board of September 6, 1944, subsequent to the effective date of the Act of the Legislature, as well as the resolution of the board adopted November 3, 1943, prior to the passage of the Act, were all made a part of what was placed before the supreme court. The supreme court of the state unanimously refused the writs sought with the statement, "No error of law in the ruling complained of." State of Louisiana ex rel. O. G. Collins, et al. v. Caddo Parish School Board, et al., No. 57687, decided October 6, 1944.

So, it is our opinion that the state court of final arbitrament having ruled that the Act and the two local school board resolutions were not in violation of the state constitution, the whole attack based on state grounds of want of constitutionality is settled for us.

It is true that the case is still in the state court to be heard on its merits as to whether or not a permanent injunction is to issue, but what we have just ruled is permitted because of what was actually sent to, heard by, and ruled upon by the supreme Court.

But, by a peculiar happening, the supreme court has approved, in detail, the constitutionality of the action of the school authorities in the present case, for in the case of State ex rel. Rathe v. Jefferson Parish School Board, 19 So. 2d 153, at page 166, when only the first resolution of the school board, that dated November 3, 1943, was extant, it said:

> "It is, therefore, obvious that even if the above quoted provisions were not in the statute, the party claiming an adverse legal right may resort to court for redress. For instance, in the case of Cook et al. v. Caddo Parish School Board et al., (No. 37,394 of the docket of this Court, wherein writs of certiorari, prohibition and mandamus were refused by us on the ground that the judgment was correct), there was no specific provision in the School Board Law (Act 100 of 1922, as amended) granting to the plaintiffs the right to appeal to a court of appropriate jurisdiction, yet the complainants, exercising their constitutional rights, did appeal or resort to the courts and had their case considered. There the School Board, after an informal public hearing, by vote of ten of its seventeen members, passed a resolution making students in the High School ineligible to participate in activities for extra-curricular honors and recognition if they were members of Greek letter fraternities and sororities, which had no connection whatsoever with the public schools. The reasons assigned by the Board for its action were that membership in these fraternities had a tendency to make the students undemocractic, snobbish and clan-

nish and interfered with the proper maintenance of school interest and scholastic attainments. The members of these fraternities and their parents vigorously protested against the Board's resolution and sought relief in the courts on the ground that the School Board's action went beyond the power and authority granted to it by the statute and was an illegal and unconstitutional deprivation of the rights of these students and parents in matters outside of public school functions. The trial judge granted a rule to show cause why a preliminary injunction should not be issued against the School Board. After a hearing he refused to issue an injunction for the reasons that the School Board had acted in good faith after a hearing upon substantial evidence and that the court would not substitute its judgment for that of the administrative and executive board performing statutory duties. The judge said:

"'There is nothing more firmly established in law than the principle that, within the limits of their authority,' the power and discretion of legally created governing boards is supreme. Their wisdom or good judgment cannot be questioned by the courts. Members of these boards are appointed or elected because of their peculiar fitness for the post. Judges are elected because of their legal knowledge and ability. They are not experienced in the business affairs of Parishes and municipalities, the construction of levees or the conduct of a public school system. A presumption of legality and regularity attaches to the action of all government boards. It is only when it is clearly shown that the action of such a board is beyond its authority or is arbitrary, unreasonable, or fraudulent that a court is justified in interfering.'

"In short, the court concluded that there was no invasion or deprivation of any legal right of the complainants and that the Board had acted within the scope of its power."

The items of the complaint left for us to consider, therefore, are those wherein there are alleged violations of the

fourteenth amendment to the Constitution of the United States.

We now proceed to that phase of the case.

The Supreme Court of the United States has benefited us materially and fully by what it said in the case of Waugh v. Board of Trustees of the University of Mississippi, 237 U. S. 589, 35 S. Ct. 720, 59 L. Ed. 1131. It will be our purpose to make a comparative analysis of the facts in the instant case and the facts of the Waugh case, so as to reach an answer one way or the other.

In setting out the facts of the Waugh case, we have prepared ourselves into a proper understanding of them by reading the same case when it was in the supreme court of the state of Mississippi under the title of Board of Trustees v. Waugh, 105 Miss. 623, 62 So. 827.

For the sake of brevity, after verification, however, we conclude that basically the general object and purpose of the Act of the state of Mississippi were the same as those of the Act of the state of Louisiana. To set out some of the facts of the Waugh case, we quote from page 721, 35 Supreme Court Reporter:

> "Complainant applied for admission into the law department of the University, but was refused admission because he declined to sign the pledge required, though he alleged that he was otherwise eligible for admission under the laws of the state and of the United States; that he has never been a member of any of the prohibited fraternities organized among the students of the University or located at the University, and, though he is affiliated with and pays dues to the chapter of the Kappa Sigma Fraternity at Millsaps College, if admitted as a student to the University of Mississippi, he has no intention or purpose of encouraging the organization or continuance of any of the prohibited fraternities, or of affiliating with or paying dues to any at the University."

To continue with the facts, we quote another part of the Waugh case, at page 722:

> "The statute is universal in its prohibitions. None of the named societies or others 'of whatever name, or

without name,' are permitted to exist in the University; and no student who is a member of any of them is permitted to receive or compete for class honors nor contend for prizes or medals. To secure this result one of of the orders of the trustees was directed.

"But, by another order of the trustees, a distinction is made. By it is provided that the statute is not to be construed 'to apply to students already entered, and who conduct themselves with that decorum always expected of Southern gentlemen.' This order is assailed by plaintiff as 'a clear discrimination between the "ins" and "outs," between those who were, at the time the statute was enacted, students in the University, and those who were not on that date members of the student body, and who might desire to be admitted as such.' The contention is made much of by counsel and the order is denounced as irrational and arbitrary. But counsel overlook that it is an obvious principle of construction, and sometimes of justice, that laws are not to be construed retrospectively. The trustees regarded and followed the principle, and left undisturbed the students already in the University, admonishing them, however, that their honor would be regarded as pledged not to abuse the right or the indulgence. And whether it was a right or an indulgence, —whether required by the statute or accorded by the trustees,—it was based on an obvious and rational distinction, and the supreme court sustained its competence."

To complete the facts of the Waugh case, we quote from it, when in the supreme court of Mississippi, supra, at page 828, 62 Southern Reporter:

"The enforcement of the act is committed to the rules prescribed by the trustees and faculties, and it is made their imperative duty, under penalty of removal from office, to see that the act is enforced. In order to carry out the duty which the Legislature imposed upon them of enforcing the act, the trustees, by an order placed upon their minutes at the September meeting in 1912, made it a condition precedent to the

right of any student to enter the University that each student making an application for admission should be required to sign the following statement: 'I hereby state and affirm upon my honor that I am not now pledged to become a member of any of the Greek letter fraternities, societies or sororities named in the Senate Bill 227 of the Laws of Mississippi, 1912, pages 192 and 193, chapter 177, and that I have not become a member of any of said fraternities, sororities or societies within the sixty days preceding the opening of the session of 1912-13. I further pledge and promise not to join any such organizations while I am a student of the University, and that I will not aid or abet or encourage the organization or perpetuation of any such orders or societies while I am a student of the University. I further promise and pledge that I will not apply for nor accept any scholarship or medal, or in any way be the beneficiary of any student's self-help fund, or accept any position in the University while I am a student therein, if I fail to keep or violate any of the provisions of the foregoing pledge. I furthermore promise and pledge to regard this obligation as binding between the sessions of 1912-13 and 1913-14, and that it shall be my purpose and constant endeavor to so act that no word or deed of mine could be even remotely construed as being violative to the letter and the spirit of what is known as the "Anti-Fraternity Bill," passed by the last Legislature and approved by the Governor February 27, 1912.' "

Waugh applied to the chancellor of the University for admission to the law school in November, 1912, when the rules for admission had been prescribed by the Board of Trustees and faculty of the University since the September before. He refused to sign the pledge.

Stipulated facts in the instant case are that the 1943-1944 session of the Caddo Parish School Board closed on June 2, 1944, and that the 1944-45 school session of the Caddo Parish public schools opened on September 11,

1944. We make a strong point of the fact that the resolution of the Caddo Parish School Board was passed on September 6, 1944, before any student, fraternity member or not, of the public schools of Caddo Parish, Byrd High included, could have been enrolled.

The only difference in the two cases appears in the fact that the trustees of the University, though authorized under the Act to dismiss those who were already members of the Greek-letter fraternities at the University of Mississippi before the passage of the Act, provided that any student who is a member of any of the prohibited societies, may, upon his entrance to any of the schools,

> " 'file with the chancellor, president or superintendent, as the case may be, an agreement in writing that he will not, during his attendance at said school, affiliate with same, nor attend their meetings, nor in any wise contribute any dues or donations to them, and, thereafter so long as such agreement is complied with in good faith, such student shall not be subjected to the restrictions created by this section.' " 35 S. Ct. 721.

Additionally, quoting again from the facts in the Waugh case, again at page 721:

> "• • • subsequent to the enactment of the statute the board of trustees of the University adopted an order which recited that the board desired it to be understood that the statute was 'not to be construed to apply to students already entered, and who conducted themselves with that decorum always expected of Southern gentlemen.' "

On the other hand, in the instant case, the provisions of Section 2 of the Louisiana Act, to the effect that

> "• • • it shall be the duty of the principals of such parish high schools • • • to suspend or expel • • • any pupil • • • *who shall be or remain a member of* • • • any such public high school fraternity or sorority or secret society, as defined herein" (Italics ours.)

are to be enforced.

This is affirmed by the language of the second resolution of the Caddo Parish School Board, dated September 6, 1944:

> " • • • that it does hereby avail itself of the additional remedies set out in the provisions of Act 342 of 1944 and accordingly it does hereby declare that fraternities and sororities and secret societies, as defined in said Act 342 of 1944, are hereby prohibited in the high schools of Caddo Parish, Louisiana, and the principal of each and every high school in this Parish is hereby authorized and directed to enforce this resolution and said Act 342 of 1944 in accordance with the terms and provisions of said legislative act."

The Act of the Legislature and the resolution of the Caddo Parish School Board of September 6, 1944, existed and were the law before any pupil of Byrd High School entered for the 1944-1945 session. So, a prospective student already a member of one of the high school secret societies has to comply with and obey Section 2 of Act 342 of 1944.

Thus, the instant situation is exactly the same in principle as with the student Waugh in Mississippi when the state required him, already a member of a Greek-letter fraternity, though at another college, to renounce his allegiance to and affiliation with such fraternity. The United States Supreme Court held that Waugh could be so obliged without denying him due process of law or his privileges or immunities as a citizen of the United States under the fourteenth amendment.

In the instant case the student is a member of the fraternity chapter in Byrd High School where entrance and enrollment are sought. Because of the disciplinary measures which the State Legislature and the Caddo Parish School Board are seeking to establish in the schools under their respective police authority, this student may be legally compelled to comply with these measures.

The manner of application of the law becomes absolutely uniform—there is not even the semblance of any discrimination as was alleged to exist in the Waugh case, and which

was pressed before and considered by the Supreme Court of the United States.

And, finally, and determinatively, is not the present plan of the school authorities to have no one a student at the High School a member of any secret society, the best and most efficient manner of curing the situation?

Because of the strikingly similar facts in the two cases, we adopt the following principles of the Waugh case from the Supreme Court of the United States:

> "It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the state of of Mississippi to determine. It is to be remembered that the University was established by the state, and is under the control of the state, and the enactment of the statute may have been induced by the opinion that membership in the prohibited socities divided the attention of the students, and distracted from that singleness of purpose which the state desired to exist in its public educational institutions. It is not for us to entertain conjectures in opposition to the views of the state, and annul its regulations upon disputable considerations of their wisdom or necessity. Nor can we accommodate the regulations to the assertion of a special purpose by the applying student, varying, perhaps, with each one, and dependent alone upon his promise.
>
> "This being our view of the power of the legislature, we do not enter upon a consideration of the elements of complainant's contention. It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law, and the condition upon which the state of Mississippi offers the complainant free instruction in its University, that while a student there he renounce affiliation with a society which the state considers inimical to discipline, finds no prohibition in the 14th Amendment." 35 S. Ct. 723.

We are referred by the complainant to the case of Meyer v. State of Nebraska, 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1043, wherein a statute of the state of Nebraska prohibiting the teaching, under the penalty of the commission of a misdemeanor by any teacher in any school of that state, whether denominational, parochial, or public, of "any subject to any person in any language other than the English language" was declared to be violative of the liberty protected by Amendment 14. The two cases involve entirely different situations. We are satisfied that the doctrine of the Meyer case may exist and be in absolutely no conflict with the doctrine of the Waugh case. The chronology of the two cases will support this, as the Waugh case was decided in 1915 and the Meyer case followed it in 1923. No mention of the Waugh case is made to reach the decision in the Meyer case.

We believe likewise that the holding under the same amendment by the United States Supreme Court in West Virginia Board of Education v. Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, that there was an invasion when school authorities compelled the flag salute and pledge, does no offense to the conclusion in this case, for in the West Virginia case there was not only an invasion into the sphere of intellect and spirit which it was the purpose of our first amendment to reserve from all official control, but likewise a collision with the guarantees under the fourteenth amendment.

Persuasively, in support of our conclusion in this case, we find that in many states of the Union, closely approaching, if not similar, conclusions have been made on the same question as we have here, to-wit: Lee v. Hoffman, 182 Ia. 1216, 166 N. W. 565; Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929; Steele v. Sextion, 253 Mich. 32, 234 N. W. 436.

In the following cases it was so well-settled that the local boards had the authority that no constitutional questions were raised or discussed: Wayland v. School Directors, 43 Wash. 441, 7 L. R. A. (NS) 352, 86 Pac. 642; Wilson v. Board of Education, 233 Ill. 464, 84 N. E. 697; Favorite v. Board of Education, 235 Ill. 315, 85 N. E. 402; Smith v.

Board of Education, 182 Ill. App. 342; Antell v. Stokes, 191 N. E. 407.

The motion to dismiss the suit of complainant because of the lack of jurisdiction based on the want of presentation of a federal question accordingly will have to be sustained and ensuingly the temporary restraining order previously issued will have to be recalled. Judgment will be signed in that tenor upon presentation.

After the final draft of this opinion, three other parents were allowed to intervene, to-wit: Messrs. Harris Frederic and Weyman H. Oden and Mrs. Tom S. Pittman. No new point, either of fact or of law, was urged; we discern none; accordingly, this opinion applies also to them.

ELMO P. LEE,
Circuit Judge
BEN C. DAWKINS,
District Judge
G. L. PORTERIE,
District Judge

Alexandria, Louisiana November 3rd, 1944.

Filed November 3, 1944. Philip H. Mecom, Clerk. U. S. Dist. Court West Dist. of Louisiana.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 769

FRED A. HUGHES, ET AL.,

Appellants,

vs.

CADDO PARISH SCHOOL BOARD, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

EDWIN L. BLEWER,
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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 1165

FRED A. HUGHES, ET AL.,

vs.

CADDO PARISH SCHOOL BOARD, ET AL.

OPPOSING JURISDICTIONAL STATEMENT AND MOTION TO DISMISS OR AFFIRM

Appellees' Statement as to Jurisdiction and Motion to Dismiss or Affirm

The appellees, believing that the matters set forth below will demonstrate the lack of substance in the questions raised by this appeal, file this, their statement in opposition to appellants' statement as to jurisdiction as amended. Appellees include herein their motion to dismiss the appeal or, in the alternative, to affirm the judgment of the District Court on the grounds that the questions raised on behalf of appellants are so unsubstantial as not to need further argument.

The unsubstantial character of the ground stated by appellants is so apparent on the face of the record as to

warrant the Court in summarily disposing of the appeal at this stage of the proceeding.

Appellees show that plaintiffs-appellants' pleadings are unsubstantial in that:

(1) They fail to set forth a right of action arising under the Constitution and laws of the United States.

(2) They fail to set up the deprivation, under color of any law, statute or ordinance of any state, of any right, privilege or immunity created by the Constitution of the United States, or of any rights created by any law of the United States providing for equal rights of citizens of the United States.

(3) Plaintiffs-appellants' complaint is lacking in substantiality because the questions attempted to be raised are controlled and foreclosed on the merits by settled doctrine as established in the case of *Waugh v. Board of Trustees of the University of Mississippi*, 237 U. S. 589, 59 L. Ed. 1131, 35 S. Ct. 720.
SEE ALSO: *Patterson v. Standard Oil & Gas Co.*, 305 U. S. 376, 83 L. Ed. 231, 59 Sup. Ct. 259; *Levering & Garigues v. Morrin*, 77 L. Ed. 1062, 289 U. S. 103; *Hannis Distilling Co. v. Baltimore*, 54 L. Ed. 482, 216 U. S. 285; *Del Pozo Y Marcos v. Wilson Cypress Co.*, 70 L. Ed. 172, 269 U. S. 82.

The matters herein relied upon by appellees are more particularly stated below:

History of the Case

The history of this case is:

(1) A committee was appointed by the Caddo Parish School Board in July 1943 to investigate the matter of secret societies in high schools.

(2) Only one high school out of ten in Caddo Parish had secret societies (Byrd High School).

(3) With continuing wide publicity, numerous hearings were had, each family in Byrd High School

(1700) was polled by letter, and in October 1943 the committee reported, finding secret societies to be detrimental in high schools.

(4) The School Board, basing its action on its investigation and the report of its committee and after consultation with the Attorney General and the State Board of Education, on the report from the poll showing that 85.3 per cent of the parents with children in Byrd High School found secret societies to be detrimental to the educational system, passed a resolution denying the holding of offices and honors in extracurricular activities to members of secret societies. This resolution was passed November 3, 1943 (see certified copy attached as part of defendants' Exhibit "A" to defendants' motion of lack of jurisdiction over the subject matter).

(5) The enforcement of this resolution was attacked in the State District Court by present counsel, representing fraternities and sororities, on the same grounds of unconstitutionality alleged in this case. A preliminary injunction was denied, and application was made to the Supreme Court of Louisiana for supervisory writs which was denied with the statement: "Application for writs denied—judgment correct," and after trial (inj. denied) on the merits that case is now pending on appeal to the Supreme Court of Louisiana, said case being entitled Amelia F. Cook et al. v. Caddo Parish School Board et al., No. 37,394 Supreme Court docket (see copy of original petition and plea of unconstitutionality identified as defendants' Exhibit "C" attached to defendants' supplemental motion of lack of jurisdiction).

(6) The Louisiana Legislature at its 1944 session passed Act 342 of 1944, setting forth the penalty of suspension or expulsion after a parish school board, in the exercise of its constitutional authority, had passed a resolution prohibiting secret societies.

(7) On September 6, 1944 the Caddo Parish School Board passed a resolution prohibiting fraternities and

sororities, under penalty of suspension or expulsion (as shown by copy of the resolution attached to appellants' amended jurisdictional statement). The School Board asserted its authority both under the resolution and under the Act.

(8) The enforcement of this resolution was attacked by present counsel in the case of O. G. Collins et al. v. Caddo Parish School Board et al., and a preliminary restraining order issued, (suit No. 90,387, First Judicial District Court, Caddo Parish, Louisiana). On hearing, the preliminary restraining order was recalled and the preliminary injunction refused. The lower court held that the School Board had full authority to pass the resolution and that it did not infringe upon any rights of the plaintiffs or their children. (See certified copy of Judge Galloway's opinion included in defendants' Exhibit "B", together with certified copy of *Plaintiffs' application for writs, and defendants' opposition* thereto, all attached to defendants' motion of lack of jurisdiction over the subject matter.) The same constitutional questions were raised in that suit as are raised in this. Writs were applied for to the Supreme Court of Louisiana which were refused with the statement: "Application for writs refused. No error of law in the ruling complained of." (Return on writs attached to defendants' Exhibit "B" supra.) (Writs refused by unanimous opinion in both the Cook case and the Collins case.)

(9) Thereupon, the same counsel obtained a temporary restraining order in the Federal District Court and filed this suit therein, based on the identical allegations as in the Collins case.

(10) Defendants-appellees herein filed a motion and supplemental motion of lack of jurisdiction over the subject matter, which were argued and briefed before a 3-judge court, said court sustaining the motion and supplemental motion aforesaid and dismissing plaintiffs' suit for lack of a Federal question.

From the above statement of facts and the matters hereinafter set out, it has been established by the Supreme Court of Louisiana that the local school board has authority to regulate secret societies. Having this authority, the only way a Federal question could arise would be from an arbitrary and unreasonable abuse of that authority. The above facts clearly show, and the State Supreme Court has held as shown hereinafter, that there was no such abuse of power. Therefore, no Federal question has been raised by plaintiffs' complaint or assignment of errors.

The Supreme Court of the State of Louisiana in *State* v. *Jefferson Parish School Board*, — La. —, 19 So. (2d) 153, at pages 166 (second column) and 167 (first column), and syllabus number 3, held, relative to the case of *Cook et al.* v. *Caddo Parish School Board et al.*, No. 37,394, that:

> "In short, the court concluded that there was no invasion or deprivation of any legal right of the complainants and that the Board had acted within the scope of its power."

Therefore, in the above case, the Supreme Court of Louisiana has clearly stated its exact grounds for refusing writs in the Cook case, and this will equally apply to the Collins case when writs were refused because the identical questions were involved.

Therefore, the Supreme Court of Louisiana has held:

(1) That the local school board had full authority to pass the resolutions involved in the suits of Cook et al. v. Caddo Parish School Board and Collins et al. v. Caddo Parish School Board;

(2) That there has been no invasion or deprivation of any legal right of the complainants in either case by the passage of these resolutions; and

(3) That the Federal constitutional questions asserted were not involved.

On the above showing of the proceedings in the State courts, the 3-judge Federal Court hearing the matter held that all matters arising under the State constitution have been precluded and that the only matters left to be considered by the Federal Court were those wherein there were alleged violations of the 14th Amendment to the Constitution of the United States.

Unsubstantial Character of the Grounds Stated by Appellants Under the 14th Amendment to the United States Constitution.

That fraternities and sororities are a proper subject for school regulation is shown by the fact that twenty-three states, namely:

Arkansas	Maine	Ohio
California	Michigan	Oklahoma
Colorado	Minnesota	Oregon
Florida	Mississippi	Rhode Island
Illinois	Montana	Vermont
Indiana	Nebraska	Virginia
Iowa	New Jersey	Washington
Kansas	Louisiana	

have passed statutes which prohibit, or provide for the regulation of, high school fraternities and sororities. Out of these states litigation has been instituted by secret society members and has been carried through the state supreme courts of California, Iowa, Illinois, Michigan, Mississippi and Louisiana, and in each instance the statute was upheld, the courts holding, relative to the 14th Amendment:

Bradford v. *Board of Education* (1912) 18 Cal. App. 19, 121 Pac. 929, at pp. 932 and 933:

> "It has been held that rights and privileges granted to citizens which depend solely upon the laws of a state are not within this constitutional inhibition. • • • The system of public schools of this state is

> a state institution, and is subject to the exclusive control of the constitutional authorities of the state. • • • 'The privilege of receiving an education at the expense of the state is not one belonging to those upon whom it is conferred as citizens of the United States, and therefore, so far as the privileges and immunities clause of the fourteenth amendment is concerned, might be granted or refused to any individual or class at the pleasure of the state.' 6 Am. & Eng. Ency. of Law, p. 77."

In the above case the statute made it unlawful for any pupil to join or to become a member of

> "any secret fraternity, sorority or club, wholly or partly formed from the membership of pupils attending such public schools,"

the penalty being suspension, or if necessary expulsion.

The plaintiff invoked the *privileges and immunities* clause, class legislation, and that "it deprives a citizen of the right to attend a public school of this state."
The court said:

> "It is quite apparent to us that the younger and more immature pupils of the public schools may quite properly form a class and be made the subject of this character of legislation. • • • The statute applies equally to all of the particular class mentioned."

Steele v. *Sexton* (1931), 253 Mich. 32, 234 N. W. 436, at pp. 437, 438.

The statute in this case made it unlawful to belong to high school fraternities, etc. The school board was given power to suspend or expel, and the Act made it illegal for school officials to give a violator credits or to allow him to graduate. In attacking the statute the plaintiff invoked the due process clause, and equal protection of the law clause of the 14th Amendment of the United States Constitution.

In answer to those objections the court said:

> "It was well said in University of Mississippi v. Waugh, 105 Miss. 623, 633, 62 So. 827, 830, L. R. A. 1915D, 588. Ann. Cas. 1916E, 522: 'The fourteenth amendment to the Constitution of the United States was never intended to act as an accomplice to any young man who wanted to take advantage of the gratuitous advantages offered the youths to obtain an education, and yet refuse to obey and submit to the disciplinary regulations enacted by the Legislature for the welfare of the institutions of learning. The right to attend the educational institutions of the state is not a natural right. It is a gift of civilization, a benefaction of the law. If a person seeks to become a beneficiary of this gift, he must submit to such conditions as the law imposes as a condition precedent to this right. The act in question is not class legislation. It is quite the reverse, and seeks to destroy the possibility of the existence of any class at the educational institutions. No state or federal constitution is violated by this act in any way. Complainant is not deprived of any constitutional right, unless complainant can be said to have a constitutional right to breach the discipline of the school and set at naught the laws of the state.' "

Lee v. *Hoffman* (1918), 182 Ia. 1216, 166 N. W. 565, at page 567.

An anti-fraternity statute was attacked on the ground of arbitrary differentiation and discrimination, class legislation, and under equal protection of the laws.

The court held it valid on all counts and stated

> "The statute does not deny the equal protection of the law by making an arbitrary differentiation, even if a statute had no better standing than a mere rule (of a local school board)." (Parenthesis ours.)

Sutton v. *Board of Education* (1923), 306 Ill. 507, 138 N. E. 131, at p. 135.

The statute in this case defined a public school fraternity, sorority or secret society in the identical language of the resolution and statute under attack in the instant case, namely:

> "as one composed wholly or in part of public school pupils on the basis of the decision of its membership rather than the free choice of any pupil in the school who is qualified by the rules of the school to fill the special aim of the organization."

The penalty provided was suspension or expulsion. The court, at page 133, reviewed cases arising under anti-fraternity society *rules* adopted by boards of education, and stated:

"Every question raised in this case has been previously adjudicated by the courts of this and other states."

The court discussed and approved *Bradford* v. *Board of Education*, 18 Cal. App. 19, 121 Pac. 929; *University of Mississippi* v. *Waugh*, 105 Miss. 623, 62 So. 827, 239 U. S. 589, 35 Sp. Ct. 720, 59 L. Ed. 1131, and then said:

> "Appellant was given his choice between suspension or expulsion, and severing his connection with the Greek letter society while a pupil in the public school. If he had complied with the requirements of the law and the rule of the board, his continued attendance at the public school would not have been interfered with."

In No Case that we have been able to find has a court of final authority failed to uphold the validity of a statute regulating secret societies.

In the following cases it was so well settled that local school boards had the authority to pass rules and regula-

tions governing secret societies, that *no constitutional questions were raised or discussed:*

Wayland v. *School Directors* (1906), 43 Wash. 441, 7 L. R. A. (N. S.) 352, 86 Pac. 642;
Wilson v. *Board of Education* (1908), 233 Ill. 464, 84 N. E. 697;
Favorite v. *Board of Education* (1908), 235 Ill. 315, 85 N. E. 402;
Smith v. *Board of Education* (1913), 182 Ill. App. 342;
Antell v. *Stokes* (1934), 191 N. E. 407 (Mass.).

The Foregoing Jurisprudence Has Long Been Approved by the United States Supreme Court and is the Fixed and Settled Jurisprudence of Both State and Federal Courts.

In the following case, which the 3-judge court from which this appeal is taken found to be *entirely analogous* with the case at bar:

University of Mississippi v. *Waugh* (1915), 105 Miss. 623, 62 So. 827, 237 U. S. 589, 59 L. Ed. 1131

and which is thoroughly discussed in the opinion of the lower court (see copy of opinion rendered by 3-judge court attached to plaintiffs' amended jurisdictional statement), it was specifically held that the statute Did Not Violate the Due Process Clause of the 14th Amendment or the Equal Protection of the Laws Clause or the Privileges and Immunities guaranteed by the United States Constitution, the court further stating (59 L. Ed. at p. 1137):

> "It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law, and the condition upon which the State of Mississippi offers the complainant free instruction in its university, that while a student there he renounce affiliation with a

> society which the state considers inimical to discipline, finds no prohibition in the 14th Amendment."

We particularly call the Court's attention to the fact that in the *Waugh* case as reported in 59 L. Ed. page 1131, the briefs of the complainant there digested show that All of the Attacks Made by the Complainants in This Case were made in that case without avail. The *Waugh* case covers a situation in which even *broader authority* was delegated than in the case at bar. In the *Waugh* case the Board of Trustees were given the authority *to permit* present members of the fraternity to continue their fraternal membership so long as they conducted themselves properly. Even the authority given the Board of Trustees in making these further discriminations was upheld. In the case at bar no student is given any preference over any other student in any way. They are all placed on identically the same footing.

Accordingly, inasmuch as the rights asserted by the plaintiffs in this case are not granted to them by the Constitution of the United States as citizens of the United States, then no Federal question is involved; and since all grounds of attack and all matters urged in this case have been completely settled by the jurisprudence of the Supreme Court of the United States as set forth in the *Waugh* case, *supra,* as well as the jurisprudence of the courts of last resort throughout the country, as shown above, then the matter is foreclosed and the complaint is lacking in substantiality.

It has been consistently held by the United States Supreme Court that:

> The privileges and immunities protected by the 14th Amendment are only those that belong to citizens of the United States as distinguished from citizens of the States—those that arise from the Constitution and

laws of the United States as contrasted from those that spring from other sources.

In discussing the *Slaughter-House cases*, 16 Wall. 36, 72-74, 77-80, 21 L. Ed. 394, 407-410, the court said in 30 Fed. Cases, No. 18,260:

> "The great body of our civil and political rights, that of acquiring and enjoying property, real and personal, to exercise trades, *ATTEND SCHOOLS* and churches, to be protected against personal violence and enjoy the freedom of opinion, were declared to *REST ENTIRELY UNDER STATE PROTECTION* and were not included in this Amendment (14th Amendment)." (Capitalization, underscoring and parenthesis ours.)

See also:

McPherson v. *Blacker*, 146 U. S. 1, 38, 36 L. Ed. 869, 878;

Duncan v. *Missouri*, 152 U. S. 377, 382, 38 L. Ed. 485, 487;

Twining v. *New Jersey*, 211 U. S. 78, 97, 52 L. Ed. 97, 105;

Maxwell v. *Bugbee*, 250 U. S. 525, 538, 63 L. Ed. 1124-1130;

Prudential Ins. Co. v. *Cheek*, 259 U. S. 530, 539, 66 L. Ed. 1044, 1052;

Snowden v. *Hughes*, 88 L. Ed. 347, 64 S. Ct. 397.

Moreover, even where there is a direct right set up in the Federal Constitution, such as the PROTECTION OF RELIGIOUS LIBERTY, this has been held subservient to the right of a state to regulate the requirements of its own school system, and the necessity that a prospective pupil must conform thereto has been consistently upheld by this Court; and thus

in *University of Maryland* v. *Coale*, (1933), 165 Md. 224, 167 A. 54, 290 U. S. 597, 78 L. Ed. 525,

> The Court decided against the contention of a student in the University of Maryland who on conscien-

tious grounds objected to military training there required. His appeal to this Court was dismissed for want of a substantial Federal question.

The report of this Per Curiam opinion in 78 L. Ed. 525 shows that in dismissing the appeal for want of a substantial Federal question, the Court cited, among other cases, *Waugh* v. *University of Mississippi*, 237 U. S. 589, etc.

Counsel for plaintiffs, in arguing the matter of Federal jurisdiction, attempted to differentiate the *Waugh* case from the case at bar on the ground that Louisiana has a compulsory education statute.

We call the Court's attention to the fact that the statute referred to *does not require* the plaintiffs' children to be sent to *any public school.*

Citing from *Act 239 of 1944:*

"Be it enacted by the Legislature of Louisiana, That every parent, etc. * * * shall send such child or children to a public *or PRIVATE DAY SCHOOL* * * *." (Underscoring and capitalization ours.)

We contend that this statute has no effect whatever on the present case because it is clear that parents have the choice of complying with the regulations under which a free public education is offered their children by the State of Louisiana, and if they do not choose to comply with these regulations, then they are free to send their children to any private school that they see fit, there being ample accommodations provided in private high schools in Shreveport, Louisiana, where complainants' children reside.

WHEREFORE, appellees respectfully submit this statement showing that the questions upon which the decision of this cause depends are so unsubstantial as not to need further argument, and appellees respectfully move the Court to dismiss this appeal at costs of appellants, or, in the alterna-

tive, to affirm the unanimous decision entered by the Honorable Three-Judge Court assembled to hear this complaint, sustaining the Motion and Supplemental Motion of Lack of Jurisdiction Over the Subject Matter and dismissing the suit of plaintiffs-appellants at their costs.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944

FRED A HUGHES ET AL.,

Appellants,

vs.

CADDO PARISH SCHOOL BOARD ET AL.,

Appellees.

No._____

MOTION FOR ORDER TO STAY AND BRIEF IN SUPPORT THEREOF.

MOTION TO STAY

Come FRED A. HUGHES, H. CLAY GARRISON, J. STEVE VARLEY and WEYMAN H. ODEN, appellants in the above entitled and numbered action, and move and pray

the court to stay enforcement of the resolution of the Caddo Parish School Board of Caddo Parish, Louisiana, adopted September 6, 1944, under and pursuant to Act No. 342 of the Legislature of Louisiana for the year 1944, for the following reasons:

1. Upon granting the appeal in this case on November 4, 1944, the District Court denied appellants' motion for an order staying enforcement of said resolution and legislative enactment, assigning the following reason therefor (Tr. 88):

> "**** the court has been assured by the parties hereto that neither will do anything to disturb the status quo prior to January 1, 1945, thus giving appellants an opportunity, within the delay referred to, to apply to the Supreme Court for a stay."

2. The Caddo Parish School Board will enforce said resolution on January 1, 1945, by expelling or suspending appellants' children from the Byrd High School, Shreveport, Caddo Parish, Louisiana, because of their membership in high school fraternities and sororities, unless restrained from doing so by order of this court;

3. The enforcement of said resolution and legislative enacment during the pendency of this case, would render ineffective the appeal herein, defeat appellants' asserted rights, and cause them and their children irreparable loss and damage.

AUTHORITIES CITED IN BRIEF

FEDERAL DECISIONS

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BRIEF IN SUPPORT OF MOTION TO STAY

Appellants' children are students of the Byrd High School of the city of Shreevport, Caddo Parish, Louisiana; and they are also members of Greek-letter fraternities and sororities located in said city, which organizations hold their meetings off the school grounds, out of school hours, and under supervision and control of their parents.

By Act No. 342 of 1944, the Legislature of Louisiana attempted to delegate to Parish school boards the power to prohibit Greek-letter fraternities and sororities in the public high schools of their respective parishes, which act we quote:

ACT NO. 342 of ACTS OF STATE OF LOUISIANA, SESSION OF 1944, PAGE 966.

"An act to prohibit fraternities, sororities and secret societies, as defined in this Act, in the public high schools of the State of Louisiana; to provide for the enforcement of this Act and to fix penalties for the violation hereof by any student of the Public high schools; to make it a misdemeanor for any person not enrolled in any public high school to solicit or encourage any pupil enrolled in any such public high school to join or to become a pledge to any high school fraternity, sorority or secret society, and to fix the penalty therefor; and to repeal all laws, or parts of laws, in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That a public high school fraternity, sorority or secret society, as contemplated by this Act, is hereby defined to be any organization composed, wholly or in part, of public high school pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such high school or schools on the basis of the decision of the membership

of such fraternity, sorority or secret society rather than upon the free choice of any pupil in the school.

Section 2. That after any parish school board, by a majority vote, shall prohibit fraternities or sororities in the high schools of such parish, it shall be the duty of the principals of such parish high schools of such parish to suspend or expel from said public high schools under their control any pupil of such public high school or schools who shall be or remain a member of, or shall join or promise to join, or who shall become pledged to become a member, or who shall solicit or encourage any other person to join, promise to join, or be pledged to become a member of, any such public high school fraternity or sorority or secret society, as defined herein; provided that after any principal or school board shall have taken any action authorized by this Act, such action shall be subject to the supervision and control of the State Board of Education.

Section 3. That it shall be unlawful from and after the passage of this Act for any person not enrolled in any public high school in any parish in which its school board has prohibited fraternities or sororities to solicit or encourage any pupil enrolled in any such public high school to join or to pledge himself or herself to become a member of any such public high school fraternity or sorority or secret society. Any person violating this section of this Act shall be guilty of a misdemeanor and shall be fined not less than Twenty-five Dollars nor more than Two Hundred Fifty Dollars for each and every offense.

Section 4. That if any section, subsection, clause, sentence, or phrase of this Act is for any reason held unconstitutional and invalid, such decision shall not effect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed this Act in each section, subsection, sentence,

clause or phrase thereof, irrespective of the fact that any one or more of its sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. That all laws, or parts of laws, in conflict herewith be and the same are hereby expressly repealed."

Under and pursuant to Act No. 342 of the Legislature of Louisiana for 1944, the Caddo Parish School Board adopted its resolution of September 6, 1944, prohibiting high school fraternities and sororities in the public high schools of Caddo Parish, which resolution we quote:

RESOLUTION OF CADDO PARISH SCHOOL BOARD OF SEPTEMBER 6, 1944.

"WHEREAS, in July, 1943, the Caddo Parish School Board appointed a special committee to investigate Greek letter fraternities and sororities and other secret societies in the public schools of this parish; and

Whereas, as a result of the investigation, report and recommendation of the above committee, the Caddo Parish School Board at its meeting of November 3, 1943, passed a resolution declaring said organizations inimical to the best interests of the public school system of this parish and making regulations relative to the participation in extra-curricular activities by pupils affiliated with said organizations; and

WHEREAS, in Suit No. 88,577, First Judicial District Court, entitled 'Amelia F. Cook et al. v. Caddo Parish School Board et al.' the District Court upheld the legality and validity of said resolution, which suit is now pending on the docket of the Supreme Court of Louisiana on an appeal taken by the plaintiffs therein; and

WHEREAS, in Suit No. 89,352, First Judicial Dis-

trict Court, entitled 'A. P. Crain et al. v. Caddo Parish School Board et al.' a similar lawsuit is pending, the outcome of which is to be decided by the above mentioned suit; and

WHEREAS, by Act 342 of 1944, the Legislature of Louisiana has declared in Section 2 thereof 'That after any parish school board, by a majority vote, shall prohibit fraternities or sororities in the high schools of such parish,' it shall be the duty of the principals of such parish high schools to suspend or expel pupils coming within the provisions of the said Act; and

WHEREAS, the Caddo Parish School Board now desires to avail itself of the provisions of the additional remedies set out in said Act 342 of 1944 and prohibit fraternities and sororities in the high schools of this parish, without in any wise abandoning its position, rights, or defenses in the above mentioned lawsuits now pending, particularly the one now on appeal before the Supreme Court of Louisiana, and with full reservation of all rights to prosecute said suits to final judgment, and with full reservation of all rights to enforce the resolution of this Board dated November 3, 1943, regardless of the outcome of any litigation or contest concerning the validity or enforceability of Act 342 of 1944;

NOW, THEREFORE, BE IT RESOLVED by the Caddo Parish School Board in legal session duly convened and assembled, a quorum being present and voting, that it does hereby avail itself of the additional remedies set out in the provisions of Act 342 of 1944 and accordingly it does hereby declare that fraternities and sororities and secret societies, as defined in said Act 342 of 1944, are hereby prohibited in the high schools of Caddo Parish, Louisiana, and the principal of each and every high school in this Parish is hereby authorized and directed to enforce this resolution and said Act 342 of 1944 in accordance with the terms and provisions of said legislative act.

BE IT FURTHER RESOLVED that the adoption of this resolution and the availing of the provisions of Act 342 of 1944 is not intended to be and shall not be deemed to be an abandonment by this Board of its position, rights, or defenses in Suits No. 88,577 and 89,322 on the docket of the First Judicial District Court, Caddo Parish, Louisiana, entitled 'Amelia F. Cook et al. v. Caddo Parish School Board et al.' and 'A. P. Crain et al. v. Caddo Parish School Board et al.', respectively, now pending, particularly the first named lawsuit now on appeal before the Supreme Court of Louisiana; and this Board fully reserves all rights to prosecute said suits to final judgment; and this Board reserves all rights to enforce the resolution of this Board dated November 3, 1943, regardless of the validity or enforceability of Act 342 of 1944."

Appellants attack the constitutionality of said legislative enactment and resolution, quoted supra, upon the following grounds material to the appeal in this case:

1. Said statute is violative of the 14th amendment to the Constitution of the United States in that it deprives plaintiffs and their children of vested rights without due process of law, abridges their privileges and immunities, deprives them of the equal protection of the laws, and attempts to grant special privileges to a class, limiting the privilege of free education to students who are not members of Greek-letter fraternities and sororities.

2. Said statute, as originally introduced in the House of Representatives, expressly declared that high school fraternities were inimical to the public good and to the welfare of the public high schools of Louisiana, but this language was stricken from said Act by the House of Representatives; that the Legislature, having failed to find said organizations detrimental to the general welfare, and, on the contrary, having in effect found otherwise, said statute has no legal basis on which to rest, and con-

stitutes a violation of the inherent personal rights guaranteed to every citizen by the State and Federal Constitutions.

Act No. 239 of the Legislature of Louisiana for the year 1944 provides for compulsory school attendance of children between the birthdays of seven and sixteen, Sections 1, 10 and 11 thereof being applicable to the appeal herein, which sections we quote:

ACT NO. 239 of ACTS OF STATE OF LOUISIANA, SESSION OF 1944, PAGE 711.

Section 1. "Be it enacted by the Legislature of Louisiana, That every parent, guardian, or other person residing within the State of Louisiana, having control or charge of any child or children between the ages of seven and fifteen years, both inclusive (i.e., from the seventh to the sixteenth birthday), shall send such child or children to a public or private day school under such penalty for noncompliance herewith as is hereafter provided."

Section 10. "Any parent, guardian, or other person who has control of a child, or children, and who shall violate the provisions of this Act shall be guilty of a misdemeanor and shall be subject to a fine not exceeding Ten ($10.00) Dollars or imprisonment not exceeding ten (10) days, or both, at the discretion of the court. Each day's unjustifiable absence shall constitute a separate offense. Visiting teachers, or other persons authorized to serve instead of visiting teachers as provided in Section 5 hereof, with the approval of the parish superintendent of education, shall have authority and it shall be their duty to file proceedings in court to enforce the provisions of this Act. All monies collected as fines for violation of this Act shall be remitted to the parish school board of the parish in which the violation occurred to be placed in the general school fund of the parish."

Section 11. "Visiting teachers, or other persons authorized to serve instead of visiting teachers as provided in Section 5 hereof, with the approval of the parish superintendent of education, and after written notice to the parent or guardian of a child, shall report any child who habitually absents himself from school to the Juvenile Court of the parish as a delinquent child, there to be dealt with in such manner as the judge of said court may determine, either by placing said delinquent in a home, public or private institution, where school may be provided for such child, or otherwise."

Appellants seek recognition and protection of civil rights guaranteed to them by the fourteenth amendment to the constitution of the United States, as construed by this court in the following cases:

Robert T. Meyer v. State of Nebraska,
67 L. Ed. 1042;

August Bartels v. State of Iowa,
67 L. Ed. 1047;

Walter M. Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary,
69 L. Ed. 1070;

Frank Hague v. Committee for Industrial Organization et al.,
83 L. Ed. 1423;

West Virginia State Board of Education v. Walter Barnette et al.,
87 L. Ed. 1628.

In Meyer vs. Nebraska, cited supra, the court said:

"The problem for our determination is wether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment. 'No state . . . shall deprive

any person of life, liberty, or property without due process of law'."

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

In Pierce vs. Society of the Sisters of the Holy Names of Jesus and Mary, cited supra, the court approved the doctrine of Meyer v. Nebraska, saying:

"Under the doctrine of Mayer v. Nebraska, 262 U. S. 390, 67 L. Ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

During the pendency of the appeal herein, appellants are entitled to have stayed the enforcement of the statute and resolution alleged to infringe their constitutional rights.

Section 266 of Judicial Code
(28 U. S. C. A., Sec. 380);

Charles E. Hovey et al. v. Augustine R. McDonald et al., 27 L. Ed. 888;

Cotting v. Kansas City Stockyards Company, 46 L. Ed. 92;

Louisville & N. R. Co. v. Siler et al., 186 Fed. 176.

While the usual practice is for the lower court to stay enforcement of state statute pending appeal from judgment denying temporary restraining order, such relief may be granted by the Supreme Court, or any justice thereof.

Section 266 of Judicial Code
(28 U. S. C. A. Sec. 380);

Charles E. Hovey et al. v. Augustine R. McDonald et al. 27 L. Ed. 888;

Rail & River Coal Co. v. Yaple et al, 214 Fed. 273;

Cumberland Telephone and Tel. Co. v. Louisiana Public Service Commission, 67 L. Ed. 217.

In Cumberland Telephone and Telegraph Company vs. Louisiana Public Service Commission, cited supra, the court said:

> Without abdicating our unquestioned power to grant such an application as this, and conceding that exceptional cases may arise, we are generally inclined to refer applications of this kind to the court of three

judges who have heard the whole matter, have read the record, and can pass on the issue without additional labor."

After appellants filed in the District Court their motion for a stay order, the defendant school board assured the court that no attempt would be made to enforce the resolution in question prior to January 1, 1945. For that reason alone the court denied said motion, stating in the per curiam that appellants would have "an opportunity, within the delay referred to, to apply to the Supreme Court for a stay."

If appellants are entitled to a stay until January 1, 1945, as the District Court in effect held, it follows that the status quo should be preserved beyond that date and during the pendency of the appeal.

For the reasons assigned, we respectfully submit that enforcement of the statute and resolution in question should be stayed.

Wherefore, appellants pray that their motion be sustained, and for such other relief as may be just and proper in the premises.

Otis W. Bullock

December 4, 1944.

OTIS W. BULLOCK,
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Shreveport, Louisiana.

No. 769. HUGHES ET AL. *v.* CADDO PARISH SCHOOL BOARD ET AL. Appeal from the District Court of the United States for the Western District of Louisiana. January 29, 1945. *Per Curiam:* The motion to amend the assignment of errors is denied. The motion to affirm is granted and the judgment is affirmed. *Waugh* v. *Mississippi University*, 237 U. S. 589. *Mr. Otis W. Bullock* for appellants. *Messrs. Edwin L. Blewer* and *W. C. Perrault* for appellees. Reported below: 57 F. Supp. 508.